

03.03.2025
Item No.12
gd/ssd

FMA/1119/2024
MD. AKMAL HOSSAIN
VS
STATE OF WEST BENGAL AND ORS.
IA NO: CAN/1/2024

Mr. Pramit Kumar Ray, Id. Sr. Adv.
Ms. Saheli Sen,
Ms. Atmaja Bandyopadhyay,
Mr. Soumon Nanda
..for the Appellant.

Sk. Md. Galib,
Mr. Tamal Taru Panda
..for the State.

Mr. Partha Pratim Ray,
Mr. S. Sanyal
..for the Respondent No.8.

1. This intra court appeal by the writ petitioner is directed against the order dated 30.07.2024 in WPA 23303 of 2023.

2. In the said writ petition the appellant had challenged a reasoned order passed by the Inspector General of Registration and Commissioner of Stamp Revenue, West Bengal. The said order came to be passed pursuant to a direction issued in an earlier writ petition filed by the appellant in WPA 13099 of 2022. The issue which fell for consideration before the Inspector General of Registration was with regard to the appointment of the respondent no.8 as Muslim Marriage Registrar (MMR) for Bhagwangola Police

Station whether it is in accordance with the relevant rules.

3. The contention raised by the learned senior advocate appearing for the appellant is that the appointment of the private respondent is illegal since no appointment either temporary or permanent could be made unless vacancy is declared by the Government. Further, it is contended before us that a well known leader of the ruling dispensation had recommended the appointment of the private respondent which is illegal. Further, it is contended that the law does not provide for appointment of two MMRs within the same police station with a distinction that one would belong to the Shia sect and other would belong to Sunni sect. It is further submitted that when the appellant was appointed, the fact that he belonged to the Sunni sect was not taken into consideration and he was appointed as MMR without there being any discrimination between the sects. Therefore, it is contended by the learned senior advocate that there cannot be any distinction or difference amongst the Mohammedans by categorizing them as Shia or Sunni. Further, it is contended that the document showing that list of vacancies for the district of Murshidabad in respect of MMRs, is a forged document as the said memo did not pertain to declaration of vacancy. Thus, it is contended that the very appointment of the private

respondent as a temporary MMR is illegal, vitiate and void as being contrary to the relevant rules.

4. The learned Government counsel appearing for the State submitted that Section 3 of the Act, 1876 empowers the Government to appoint more than one MMR in the locality which is entirely the prerogative of the State. Further, the Proviso under the said Section states that in case of appointment of two MMRs one must belong to Shia sect and other to Sunni sect. Further, it is submitted that the appointment on temporary basis, no declaration of vacancy is required to be made and invitation of candidates and selection by a board is not required and the District Registrar is empowered to its own and such appointment should be approved by the Government through the Inspector General of Registration and Commissioner of Stamp Revenue.

5. Thus, the two issues which fell for consideration before the learned writ court as well as before us is whether the appointment of the private respondent was arbitrary as it was pursuant to a recommendation made by a powerful person in the ruling dispensation and whether there is any doubt as regards to which sets of Mohammedan community the private respondent belongs to.

6. At this juncture, it is relevant to take note of Section 3 of the Act of the Bengal Muhammadan

Marriages and Divorces Registration Act, 1876 (Bengal Act 1 of 1876). Section 3 of the said Act states that it should be lawful for the State Government to grant a license to any person, being a Muhammadan, authorizing him to register Muhammadan marriages and divorces which have been effected within certain specified limits, on application being made to him for such registration; and in like manner it shall be lawful for the said State Government to revoke or suspend such license. Proviso in Section 3 states that provided not more than two persons shall be licensed to exercise the said function within the same limits; and provided further that, when two persons are so licensed to act within the same limits, the one shall be a member of the Sunni, and the other of the Shia, sect.

7. Thus, the Act makes a clear distinction with regard to the cases where more than one person is to be appointed and the Proviso empowers appointing two persons not more than two persons and if that is done, one should belong the Sunni sect and other should belong the Shia sect.

8. The Government of West Bengal had issued Notification dated 14th August, 1929 in exercise of powers conferred under Section 24 of the 1876 Act read with Rule 2(2) of the transferred subject (Temporary Administration) Rules and in supersession of all the previous Rules made under Sections 18 and 24 of the

Act. Under the said Rule a procedure for selection of candidates for Muslim Registrarship in districts other than Calcutta has been provided under Rule 3. For better appreciation, the Rule is quoted hereinbelow:

“3(a) PROCEDURE FOR SELECTION OF CANDIDATES FOR MUHAMMADAN REGISTRARSHIP IN DISTRICTS OTHER THAN CALCUTTA. On the occurrence of a vacancy in the post of a Muhammadan Registrar or on the creation of a new office in any district other than the district of Calcutta, the Registrar shall at once make a temporary appointment to carry on the work of the office, intimate the vacancy to the Inspector-General of Registration and invite applications for the permanent post. Applications may also be received by Inspector-General of Registration but on receipt he should forward them to the Registrar of the district concerned. The Registrar will, then send to the Inspector-General of Registration all the applications for the post after recommending in order of preference the best four of the applications and merely noting on the others “not recommended”. On receipt of the applications the Inspector-General of Registration will ask the Permanent Committee to consider them along with his remarks and the remarks of the Registrar, as the case may be, and submit their recommendations to him putting forward three names for each vacancy in order of preference. He will then communicate the recommendations to Government who may select one out of these, three names or, for any special reason, may select any other from the rest of the candidates.

(b) PROCEDURE IN MAKING TEMPORARY APPOINTMENT.- In making temporary appointments the Permanent Committee need not be consulted. The District Registrar shall nominate a suitable person for each vacancy. The District Registrar’s nomination, shall be submitted to Government by the Inspector-General of Registration who, if he disapproves of the District Registrar’s nominee, may recommend the appointment of any other

candidates. A temporary license shall then be issued to the candidate approved by the local Government.

(c) PROCEDURE IN FILLING UP VACANCIES EITHER TEMPORARY OR PERMANENT IN CALCUTTA.-In filling up vacancies (either temporary or permanent) occurring in Calcutta, applications will be received by the Inspector-General of Registration. In the case of a temporary vacancy, he shall select a suitable person for each vacancy and submit his nomination to Government. In the case of a permanent vacancy, he shall consult the Permanent Committee, who will be asked to submit three names for the consideration of Government, for each vacancy. He will forward those names to Government with his remarks as well as the remarks of the Permanent Committee.”

9. Clause (b) of Rule 3 deals with procedure in making temporary appointments and it states that while making temporary appointments the Permanent Committee need not be consulted and the District Registrar shall nominate a suitable person for each vacancy. This nomination is then submitted to the Government by the Inspector General of Registration who, if he disapproves of the District Registrar's nominee, may recommend the appointment of any other candidate. A temporary licence shall then be issued to the candidate approved by the local Government.

10. Thus, it is to be seen as to whether these procedures have been followed by the authority. In fact, the Inspector General of Registration while passing the reasoned order dated 4.5.2023 which is impugned

in the writ petition as noted the provisions of the Rule 3(b) and rightly held that the Rule does not put any restriction on the continuity of the functioning of the temporary of a particular police station area or within a specified limit as declared by the State Government.

11. After analyzing the documents which were placed and also noting that a private respondent has produced certificate issued by the local representatives stating that he belongs to the Shia sect and also noting that the procedure under Rule 3(b) of the Rules has been followed, affirmed the said appointment. Much has been said about the recommendation letter said to have been obtained by the private respondent from a political personality, namely, the President of the Murshidabad District of the ruling dispensation dated 23rd March, 2017.

12. It is pointed out by the learned counsel for the State that the petitioner himself has also obtained one such certificate and such certificate has been appended to page 58 of the affidavit-in-opposition which is in favour of the appellant/writ petitioner it has been issued by the Minister in-Charge of the Government of West Bengal.

13. Thus, it has to be seen as to why such certificates are required. The answer is contained in the Rules, namely, Rule 5 which deals with form of application and under Clause 9 of the said Rule one of

the documents to be appended to the application are the names and addresses of persons recommending the candidate.

14. Thus, in the Rule itself provides for a recommendation to be appended nothing much can be said about the certificate obtained by the private respondent or for that matter the certificate obtained by the appellant/writ petitioner himself.

15. Therefore, nothing turns out on the said issue and the appointment of the private respondent cannot be set at naught on that ground.

16. Thus, it is seen that under the scheme of the Act as well as the Rules the Government is entitled to appoint two MMRs in a particular police station with the condition that one should be Shia sect and other should be Sunni sect.

17. Therefore, the appellant cannot be heard to say that there cannot be any such distinction that when he was appointed as MMR on probation, such distinction was not followed. When the Rule mandates such a procedure, the authority cannot be faulted for having resorted to such procedure.

18. That apart, the learned Single Bench rightly noted that the Government relied upon the certificate issued by a Member of Legislative Assembly to satisfy itself that the respondent no.8 belongs to Shia sect and it is not the case of the appellant/writ

petitioner that he is a Shia and two Shias cannot be appointed.

19. Thus, the court cannot formulate a law nor invent a new procedure in the matter of appointment of the MMRs.

20. The appellant/writ petitioner had earlier challenged the Section 3 of the 1876 Act in WPA 25638 of 2017 which was dismissed as having become infructuous.

21. However, the order did not preclude the appellant/writ petitioner from challenging the selection process adopted by the State respondents.

22. In any event the appellant is functioning as MMR on probation in the vacancy which was initially occupied by the appellant/writ petitioner's father.

23. Thus, there appears to be certain other vested interest on the part of the appellant/writ petitioner in questioning the correctness of the appointment of the respondent no.8.

24. Thus, we find that the reasons assigned by the learned Single Bench for dismissing the writ petition is fully justified and does not call for any interference.

25. Accordingly, the appeal fails and the same is dismissed.

26. Though in the earlier an order was passed by this court directing the learned Government counsel

to produce the records which file is available with the learned Government counsel.

27. In the light of the reasoning given above, the file is returned to the learned Government counsel who in turn shall return to the department.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)